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11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 DURK BANKS, et al.,

17 Defendants.  
18

No. CR 24-621(B)-MWF

GOVERNMENT'S OMNIBUS OPPOSITION TO  
DEFENDANT DURK BANKS' MOTION IN  
LIMINE TO EXCLUDE PROPOSED 404(B)  
EVIDENCE AND DEFENDANT DEANDRE  
WILSON'S MOTION FOR SEVERANCE

19 Plaintiff United States of America, by and through its counsel  
20 of record, the Acting United States Attorney for the Central District  
21 of California and Assistant United States Attorneys Ian V. Yanniello,  
22 Gregory W. Staples, and Daniel H. Weiner, hereby files its Omnibus  
23 Opposition to Defendant Durk Banks' Motion in Limine to Exclude  
24 Government's Proposed 404(b) Evidence (Dkt. 258) and Defendant  
25 Deandre Wilson's Motion for Severance (Dkt. 242) in the  
26 above-captioned case. The Motion to Exclude is joined by defendants  
27 Wilson, Lindsey, and Houston. The Motion for Severance is joined by  
28 defendants Lindsey and Houston. The government submits that its

1 omnibus response furthers efficiency and judicial economy, as the  
2 factual and legal issues substantially overlap.

3 This Opposition is based upon the attached memorandum of points  
4 and authorities, the files and records in this case, and such further  
5 evidence and argument as the Court may permit.

6 Dated: October 27, 2025

Respectfully submitted,

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION AND SUMMARY OF ARGUMENT**

The Second Superseding Indictment ("SSI") charges defendants with, among other crimes, Murder-for-Hire Resulting in Death, Conspiracy to Commit Murder-for-Hire Resulting in Death, and Stalking Resulting in Death. Trial is set to begin on January 20, 2026.

At trial, the defendants cannot credibly dispute that T.B. and his entourage were stalked for hours across Los Angeles, and that S.R. was brazenly murdered in broad daylight by three of the stalkers. Rather, the disputed facts and the crux of the trial will be *who* ordered and participated in the calculated murder, and *why*? The SSI contains core allegations necessary to answer these questions and to prove the government's case, including: (1) evidence establishing motive, including that in 2020, Dayvon Bennett aka King Von, a high-ranking OTF member and close friend of defendant Banks, was shot and killed following a physical altercation with T.B. at a nightclub in Atlanta, Georgia, SSI ¶ 3; and (2) evidence about defendant Banks' leadership of OTF, which operates both as a legitimate music enterprise with a group of members (including defendant Banks) who operate consistent with a street gang seeking revenge and perpetuating violence on behalf of OTF.

Despite the obvious materiality of these case-dispositive issues, defendant Banks' motion seeks to exclude *essentially all* evidence related to them, effectively blinding the jury to evidence necessary to tell a coherent and accurate story about S.R.'s murder. Among other things, evidence proving these core allegations is necessary to explain why the Los Angeles murder was committed and the identity, roles, and relationships of each of the co-conspirators ---

1 including defendant Banks, who attempted to conceal his participation  
2 by acting through trusted intermediaries, including defendant Wilson  
3 [REDACTED].

4 The motion should be denied in its entirety for several reasons.  
5 *First*, defendant attempts to isolate each piece of disputed evidence  
6 and apply Rule 404(b), when much of the evidence is inextricably  
7 intertwined with the charges and not subject to Rule 404. *Second*,  
8 defendant argues for exclusion because the evidence will purportedly  
9 cause a mini-trial and/or defendants' admissions (including lyrics)  
10 are subject to differing interpretations. As set forth below, the  
11 government intends to streamline and expediently present the critical  
12 evidence at issue, mostly through witnesses --- including those  
13 cooperating with the government --- who will already be testifying at  
14 trial. Moreover, to the extent defendants ascribe a meaning to  
15 defendants' statements that differs from the government's  
16 interpretation, that is the purpose of a jury trial.

17 The Court should therefore reject defendants' request to prevent  
18 the jury from hearing the following highly probative evidence, which  
19 is critical to telling a coherent and accurate story about S.R.'s  
20 murder:

- 21 • Evidence related to T.B.'s associate shooting and killing  
22 Dayvon Bennett aka "King Von" outside of an Atlanta nightclub  
23 in November 2020, see Mot. at 6-7. **This evidence proves  
motive and is inextricably intertwined with the charges and  
not subject to Rule 404(b);**
- 24 • That following Bennett's 2020 death, defendant Banks and OTF  
25 members faced pressure from fans to "slide for Von,"  
26 referring to seeking revenge for Bennett's death, see Mot. at  
27 15-16. **This evidence proves motive and is inextricably  
intertwined with the charges and not subject to Rule 404(b);**
- 28 • Defendant Banks' statements on a podcast (1) acknowledging  
the public pressure to "slide for Von" and (2) admitting the

1 pressure subsided after the Los Angeles murder of S.R.,  
2 noting "[f]or some reason I just don't see them comments no  
3 more . . . for some odd reason . . .", see Mot. at 13-14.  
4 **This evidence is a party admission and otherwise inextricably  
intertwined with the charges and not subject to Rule 404(b);**

- 5 • Evidence related to OTF's structure and defendant Banks's  
6 control over OTF members, including two text threads in which  
7 defendant Banks discusses violence targeted against rivals,  
8 see Mot. at 20-22. **This evidence is inextricably intertwined  
with the charges and material to proving the relationship  
among co-conspirators, identity, intent, plan, modus operandi  
and absence of mistake;**
- 9 • Evidence related to certain of defendant Banks' lyrics (i.e.,  
10 admissions) about placing bounties and greenlighting  
11 violence, see Mot. at 11, 25. **This evidence is a party  
admission and otherwise material to proving identity, intent,  
plan, modus operandi and absence of mistake; and**
- 12 • Evidence showing a 2022 Chicago murder was motivated by money  
13 linked to OTF and defendant Banks, see Mot. at 16. **This  
evidence is material to proving identity, intent, plan, modus  
operandi and absence of mistake.**

14  
15 For the reasons described below, the Court should reject the  
16 motion in full so the government can prove these core allegations  
17 integral to its case and present a coherent story to the jury.

18 For substantially similar reasons, the Court should also deny  
19 defendants Wilson, Lindsey, and Houston's request for severance.  
20 These defendants fail to demonstrate any unfair prejudice --- in a  
21 conspiracy trial --- from the introduction of evidence showing how  
22 the conspiracy operated, the relationship between co-conspirators,  
23 and the motive for the conspiracy. Any concern for unfairness can be  
24 addressed through limiting instructions from the Court, as trial  
25 courts routinely do and courts of appeal routinely affirm. The  
26 consumption of court time for multiple trials far outweighs any risk  
27 of unfair prejudice in this case. The motion to sever should be  
28 denied.

1 **II. LEGAL BACKGROUND<sup>1</sup>**

2 **A. Inextricably Intertwined Evidence**

3 The Ninth Circuit has long permitted the government to offer a  
4 complete picture of the charged crime. "A jury is entitled to know  
5 the circumstances and background of a criminal charge. It cannot be  
6 expected to make its decision in a void -- without knowledge of the  
7 . . . circumstances of the acts which form the basis of the charge."  
8 United States v. Daly, 974 F.2d 1215, 1217 (9th Cir. 1992).

9 Accordingly, evidence that is "inextricably intertwined" with  
10 the charged conduct is admissible without regard to the "other  
11 crimes" requirement of Federal Rule of Evidence 404(b). United  
12 States v. DeGeorge, 380 F.3d 1203, 1220 (9th Cir. 2004). The  
13 exclusion of "inextricably intertwined" facts from the ambit of Rule  
14 404(b) is because the evidence is "offered as direct evidence of the  
15 fact in issue, not as circumstantial evidence requiring an inference  
16 as to the character of the excused." United States v. Loftis, 843  
17 F.3d 1173, 1176 (9th Cir. 2016).

18 The Ninth Circuit recognizes two kinds of inextricably  
19 intertwined evidence: (1) evidence which "constitutes a part of the  
20 transaction that serves as the basis for the criminal charge," and  
21 (2) evidence that is "necessary" to "permit the prosecutor to offer a  
22 coherent and comprehensible story regarding the commission of the  
23 crime.'" United States v. Vizcarra-Martinez, 66 F.3d 1006, 1012-13  
24 (9th Cir. 1995). With respect to the latter, the Ninth Circuit has  
25 held that "it is obviously necessary in certain cases for the  
26

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27  
28 <sup>1</sup> The government's opposition to defendants' motion to dismiss  
for vagueness includes a thorough summary of the allegations in the  
SSI, which the government incorporates herein by reference.

1 government to explain either the circumstances under which particular  
2 evidence was obtained or the events surrounding the commission of the  
3 crime." Id. at 1013; see also United States v. Collins, 90 F.3d  
4 1420, 1428 (9th Cir. 1996) (evidence is admissible "for the purpose  
5 of providing the context in which the charged crime occurred").

6 **B. Rule 404(b) Evidence**

7 Under Rule 404(b), evidence of a defendant's prior crimes or  
8 wrongful acts may not be introduced to show bad character, but it is  
9 admissible to show motive, opportunity, intent, plan, knowledge,  
10 absence of mistake, or lack of accident. Fed. R. Evid. 404(b)(2);  
11 United States v. Bailey, 696 F.3d 794, 799 (9th Cir. 2012). The  
12 Ninth Circuit has consistently held that Rule 404(b) is a "rule of  
13 inclusion," which permits the admission of other relevant crimes or  
14 acts "except where it tends to prove only criminal disposition."  
15 United States v. Ayers, 924 F.2d 1468, 1472-73 (9th Cir. 1991)  
16 (cleaned up); United States v. Cruz-Garcia, 344 F.3d 951, 954 (9th  
17 Cir. 2003) (same).

18 Other acts evidence is admissible under Rule 404(b) if: "(1) the  
19 evidence tends to prove a material point; (2) the prior act is not  
20 too remote in time; (3) the evidence is sufficient to support a  
21 finding that the defendant committed the other act; and (4) (in cases  
22 where knowledge and intent are at issue) the act is similar to the  
23 offense charged." United States v. Vo, 413 F.3d 1010, 1018 (9th Cir.  
24 2005) (cleaned up). "Once it has been established that the evidence  
25 offered serves one of the [404(b)] purposes, the . . . 'only'  
26 conditions justifying the exclusion of the evidence are those  
27 described in Federal Rule of Evidence 403: unfair prejudice,  
28 confusion of the issues, misleading the jury, undue delay, waste of

1 time, or needless presentation of cumulative evidence.” United  
2 States v. Curtin, 489 F.3d 935, 944 (9th Cir. 2007).

3 **III. THE GOVERNMENT’S PROPOSED EVIDENCE IS NECESSARY TO PROVE CORE**  
4 **ISSUES IN THIS TRIAL**

5 **A. Evidence of Defendant Banks’ and OTF’s Rivalry with T.B. is**  
6 **Inextricably Intertwined with the Murder and Stalking**  
7 **Charges**

8 Defendant Banks concedes that “most of the [government’s]  
9 proposed evidence would not properly fall within the purview of []  
10 Rule 404(b).” (Mot. at 4.) The government agrees. That is why the  
11 government’s preliminary disclosure<sup>2</sup> stated that the motive-related  
12 evidence of OTF’s and defendant Banks’ rivalry with T.B. was direct  
13 evidence of, and inextricably intertwined with, the murder charges in  
14 the SSI, which should be admitted against all defendants. (See Mot.,  
15 Ex. A at 2.)

16 The government seeks to introduce two discrete categories of  
17 motive-related evidence that are necessary to explain the events  
18 surrounding S.R.’s murder: (i) evidence related to the murder of  
19 Bennett in November 2020 and defendant Banks’ and his OTF  
20 co-conspirators’ rivalry with T.B.; (ii) the public pressure ---

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21 <sup>2</sup> The Court-ordered deadline for the government to provide  
22 notice of its intent to introduce evidence under Rule 404(b) is  
23 November 17, 2025. In August 2025, the government provided  
24 defendants with an early, preliminary disclosure of certain acts the  
25 government intends to prove at trial. This preliminary disclosure  
26 was made as a compromise to accommodate defendants’ request to  
27 provide advance notice of other “large events” (e.g., additional  
28 assaults or murders) that the government would seek to introduce at  
trial. Accordingly, on September 1, 2025 --- over two months before  
the Court-ordered 404(b) disclosure deadline --- the government  
provided its preliminary notice. Rather than identify what portions  
of the preliminary notice he believed were insufficient or wait until  
the government provided any updated notice in mid-November, defendant  
filed this motion, seeking wholesale exclusion of evidence in the  
preliminary notice.

1 including from defendant Banks' and OTF's fans who repeatedly and  
2 publicly demanded that Banks exact revenge by "sliding for Von" for  
3 Bennett's death; and (iii) statements and/or admissions the  
4 defendants<sup>3</sup> made about "Sliding for Von" and fan pressure.

5 Defendant concedes this evidence is relevant to the government's  
6 theory that the OTF defendants sought revenge against T.B., but  
7 argues the evidence should be excluded (1) based on inapplicable case  
8 law analyzing Rule 404(b) evidence, and (2) because the introduction  
9 of the evidence will purportedly result in a "mini-trial." (See Mot.  
10 at 6-7.) Both arguments fail for multiple reasons.

11 First, contrary to defendant's claim, the motive evidence is not  
12 subject to Rule 404(b). Rule 404 exists to dissuade juries from  
13 convicting a defendant because of otherwise unrelated evidence of  
14 defendant's bad character. See United States v. McCourt, 925 F.2d  
15 1229, 1235-36 (9th Cir. 1991). That rule simply has no applicability  
16 for the above acts, as the government is not contending that any  
17 defendant in this case killed Bennett --- the facts show someone  
18 affiliated with T.B. did, which is why the evidence is relevant in  
19 this case. This motive evidence is clearly admissible, as it is  
20 necessary to "explain the reason that [defendant Banks and the other  
21 co-conspirators] would kill [T.B.]," and "show how and why" the  
22 hitmen in this case flew across the country in search of a reward for  
23 the killing. United States v. Santiago, 46 F.3d 885, 889 (9th Cir.  
24 1995); see United States v. Mills, 704 F.2d 1553, 1559 (11th Cir.  
25 1983) ("To make the crime comprehensible to a jury it was necessary

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27 <sup>3</sup> Defendant Banks's motion to exclude cites to statements made  
28 by defendant Banks; however, the government reserves the right to  
present at trial relevant statements and admissions made by any  
defendant.

1 for the government to show how the Aryan Brotherhood functioned, that  
2 Mills was a member of the Aryan Brotherhood, that an affront to a  
3 fellow member might serve as an adequate motivation for Mills to kill  
4 a person whom he barely knew, and that it was possible for a member  
5 of the Brotherhood incarcerated in one federal prison to communicate  
6 the murder contract to another member in a different prison, despite  
7 mail censorship and restrictions on inter-inmate correspondence.”).

8 Second, defendant’s contention that the public comments on his  
9 social media do not bear on his state of mind or motive (Mot. at 16)  
10 is belied by his own admissions. For example, defendant Banks rapped  
11 in one 2021 song: “They be on my page like ‘slide for Von,’ I know  
12 they trollin’ me,”<sup>4</sup> an obvious reference to the scores of fans who  
13 goaded him and OTF into retaliating on his social media.<sup>5</sup> Then,  
14 following S.R.’s murder, defendant appeared on a well-known podcast  
15 where he tacitly admitted his involvement. After being asked about  
16 his rivalry with T.B. and in response to the interviewer’s question  
17 about whether defendant was “triggered by the ‘slide for Von’  
18 comments,” defendant coyly responded, “For some reason I just don’t  
19 see them comments no more . . . for some odd reason . . . might be  
20 the water . . . we here though.”<sup>6</sup> These direct admissions --- which  
21

---

22 <sup>4</sup> See Nardo Wick ft. Lil Durk, 21 Savage, & G Herb, “Who Want  
23 Smoke??”, available at <https://www.youtube.com/watch?v=U2SNwtE-0Us>.

24 <sup>5</sup> As discussed below, defendant’s contention that introducing  
25 rap lyrics will be time consuming is wrong. Defendant cannot  
26 seriously dispute that he publicly rapped and embraced the lyrics.  
27 It is therefore inapposite when the lyrics were written or who wrote  
the lyrics. These statements are direct admissions of defendant’s  
motive, whether they were rapped in a song, written in a diary, or  
sent in a text message. Defendants, of course, are free to argue to  
the jury that someone else --- not defendant Banks --- wrote the  
lyrics or that the lyrics have a different meaning.

28 <sup>6</sup> Defendant’s contention that “it is unclear what ‘slide for  
Von’ means” (Motion at 15) is belied by his own admissions.



1 show defendant Banks' state of mind and embrace of his feud with T.B.  
2 --- "pertain to the chain of events explaining the context, motive  
3 and set-up of the crime," and are therefore integral to the  
4 government's narrative. United States v. Williford, 764 F.2d 1493,  
5 1499 (11th Cir. 1985); Santiago, 46 F.3d at 889 (defendant's  
6 admission that he needed to kill someone to join Mexican Mafia  
7 inextricably intertwined to show why defendant killed a stranger in  
8 prison).

9 Defendant's contention that the motive evidence will create a  
10 "mini trial" is similarly meritless. The motive evidence is  
11 coextensive with the presentation of the government's case, including  
12 cooperating witness testimony. For example, [REDACTED]

13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED].

23  
24 <sup>7</sup> The government reserves the right to decide how it will  
25 introduce trial evidence, however, the government notes that [REDACTED]

26 [REDACTED]  
27 [REDACTED]. While defendant asserts the  
28 Atlanta shooting involves a "complicated officer-involved shooting  
that resulted in two deaths and several others shot," the government  
does not intend to introduce facts that are irrelevant to the  
defendants' motive in this case.

1 In sum, defendant offers no legitimate basis --- and no law  
2 --- supporting the exclusion of the motive-related evidence.

3 **B. Evidence that OTF Members --- Including Defendant Banks [REDACTED]**  
4 **[REDACTED] --- Attempted to Kill T.B. in May 2021 Is Direct**  
5 **Evidence of the Stalking Charge**

6 Defendant also seeks to exclude evidence related to a May 2021  
7 attempt by OTF members and associates to ambush and kill T.B. at a  
8 Georgia gas station. This evidence is inextricably intertwined with  
9 all charges in this case, but is also direct evidence of the stalking  
10 charge in the SSI, which charges that the defendants, "beginning on a  
11 date unknown," and continuing to August 19, 2022, stalked T.B. and  
12 his entourage. (SSI at Count 3.) Like the motive evidence, the  
13 government anticipates presenting this evidence in a streamlined way  
14 through [REDACTED].<sup>8</sup>

15 Such evidence is clearly relevant, material, and admissible in  
16 this case. Defendant Banks' and OTF's previous stalking and  
17 attempted murder of T.B. "constitutes a part of the transaction that  
18 serves as a basis for the [stalking] charge." Vizcarra-Martinez, 66  
19 F.3d 1006, 1012-13 (9th Cir. 1995). Moreover, testimony about  
20 defendant Banks' associates' "prior unsuccessful attempts to [kill  
21 T.B.] at [defendant Banks'] request explained both the nature of [a]  
22 conspiratorial relationship, and how and why the [murder plot] was  
23 set in the manner that it was." United States v. Serang, 156 F.3d  
24 910, 915 (9th Cir. 1998) (evidence of two prior attempts to burn

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25  
26 <sup>8</sup> [REDACTED]  
27 [REDACTED]  
28 [REDACTED]

1 restaurant were inextricably intertwined with arson and conspiracy  
2 charge).

3 Defendant's primary contention for exclusion is that the only  
4 connection between this attempted murder and defendant Banks is  
5 [REDACTED]. This basis for exclusion is precluded  
6 by binding Ninth Circuit law. United States v. Johnson, 132 F.3d  
7 1279, 1283 (9th Cir. 1997) (holding the "reliability threshold" for  
8 admissibility under Rule 404(b) "is not a high one, and the testimony  
9 of a single witness can be sufficient"). The evidence should be  
10 admitted.

11 **C. Evidence Related to OTF's Structure and Defendant Banks'**  
12 **Control Over OTF Members Is Necessary to Prove Identity,**  
**Intent, Modus Operandi, and Absence of Mistake**

13 As detailed above, at trial the government will prove that six  
14 hitmen traveled to Los Angeles and used two cars to stalk and attempt  
15 to murder OTF rival, T.B. Missing their target, the hitmen shot and  
16 killed S.R. The government intends to introduce evidence to  
17 establish the structure of OTF to show the relationship among the co-  
18 conspirators and defendant Banks' leadership --- not just over OTF's  
19 legitimate music enterprise, but critically his knowledge of and  
20 involvement in OTF's violence. As the Court referenced during  
21 defendant Banks' detention hearing, a critical factual issue in this  
22 case is whether defendant Banks ordered and participated in the  
23 murder; or, alternatively, whether the hitmen committed the murder on  
24 their own or to impress defendant Banks.

25 The government seeks to introduce limited, narrowly tailored  
26 evidence under Rule 404(b) showing defendant Banks' power and control  
27 over his co-conspirators, and his co-conspirators' willingness to  
28 carry out his violent threats and demands, including the following:

1 (1) a text thread showing defendant Banks told a rival "I got them  
2 hunting you . . ." which he forwarded to OTF members, including  
3 defendant Wilson, [REDACTED]<sup>9</sup> (2)  
4 a text thread showing a feud between defendant Banks and a rival in  
5 which defendant Banks told OTF members he was going to "pipe it up"  
6 (grab a gun); and (3) a voice memo from [REDACTED]  
7 discussing OTF structure and defendant Banks' control over money and  
8 other OTF members.

9 This evidence is highly relevant to material disputed issues and  
10 should be admitted. Indeed, a primary defense by defendant Banks in  
11 this case is likely to be that even if the OTF members and associates  
12 murdered S.R., defendant Banks did not know about and/or order the  
13 murder. To prove defendant Banks' intent, knowledge, plan, modus  
14 operandi, and absence of mistake, the government must be permitted to  
15 introduce limited evidence showing that defendant Banks --- not  
16 someone else within OTF --- had control over the organization,  
17 including its money, and that other OTF members would fly across  
18 country to murder another rap artist on their own.

19 As such, the government intends to introduce a text message  
20 thread from April 2023 in which defendant Banks sent his OTF co-  
21 conspirators, including defendant Wilson [REDACTED], a screenshot of  
22 defendant Banks' taunting a rival: "I got them hunting you up ads  
23 better have 3ski mask on." In response, OTF members warn defendant  
24 Banks to protect himself in light of the threat, stating: "If you  
25 talk to them blood on the dm text them in vanish mode." Materially,  
26

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27 <sup>9</sup> The government anticipates that [REDACTED]  
28 [REDACTED]

1 defendant Banks made clear in this text thread that he ("I got") ---  
2 not another OTF member --- has control over OTF associates that were  
3 "hunt[ing]" the rival.

4 And in a similar thread from the same month, defendant Banks and  
5 his OTF associates discuss defendant Banks' heated exchange with  
6 another rival gang member, with defendant Banks telling his  
7 associates: "I'm finna pipe it up," i.e., a common street reference  
8 to the use of a firearm.<sup>10</sup> In response to defendant Banks' call for  
9 violence against the rival gang, [REDACTED] agreed to follow  
10 Banks' lead, exclaiming: "Blood it's green [emoji of car and traffic  
11 light] getting shit together now no phones," referring to a "green  
12 light" to act on defendant Banks' order. And defendant Banks'  
13 associates did just that: the government anticipates that [REDACTED]

14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED].

17 These two discrete text threads are direct evidence showing  
18 OTF's structure and are otherwise highly probative to prove identity,  
19 intent, modus operandi, plan, and absence of mistake for defendant  
20 Banks and his co-conspirators: specifically, the threads demonstrate  
21 Banks' modus operandi of threatening his rivals, funding acts of  
22 violence against them, and defendant Banks' control over his OTF  
23 associates and his OTF co-conspirators' willingness to act on his  
24 behalf. Courts routinely admit such evidence under Rule 404(b),  
25

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26 <sup>10</sup> Regarding the "pipe it up" thread, the government expects that  
27 [REDACTED]  
28 [REDACTED]

1 particularly in conspiracy cases where evidence of other acts  
2 "show[s] the background and development of the conspiracy" and "would  
3 help explain why [a co-conspirator] trusted [another conspirator]  
4 enough to include him in the risky scheme." United States v.  
5 Hill, 953 F.2d 452, 457 (9th Cir. 1991); see, e.g., United States v.  
6 Jones, 982 F.2d 380, 382-83 (9th Cir. 1992), as amended (Apr. 6,  
7 1993) (admitting prior acts because they "explain the nature of  
8 the relationship" between co-conspirators while placing "their  
9 transaction in context for the jury").

10 Indeed, the Eighth Circuit's decision in United States v.  
11 Jourdain is instructive. In that case, the court affirmed the  
12 government's use of the defendant's prior solicitation of a shooting,  
13 reasoning that the evidence "was relevant to establish (1) whether  
14 the men shared a joint criminal purpose, (2) whether Jourdain had  
15 knowledge of the violence potential of his buddies and a shooting was  
16 foreseeable to Jourdain, and (3) whether the shooting of [the victim]  
17 after Jourdain confronted [the victim] could have been a mistake or  
18 accident." 433 F.3d 652, 659 (8th Cir. 2006). So too here, where  
19 defendant Banks may claim that "he was merely present" in Los Angeles  
20 during the stalking and murder, evidence of defendant Banks' threats  
21 to other OTF rivals --- and his OTF co-conspirators' readiness to act  
22 on those threats --- is highly probative and necessary to prove,  
23 among other things, the identity, knowledge, and plan of the  
24 conspirators in this case. See id.; see also United States v.  
25 Pipola, 83 F.3d 556, 565-66 (2d Cir. 1996) (noting that "legitimate  
26 purpose[s] for presenting evidence of extrinsic acts" under Rule  
27 404(b) include "explain[ing] how a criminal relationship developed,"  
28 and "help[ing] the jury understand the basis for the coconspirators'

relationship of mutual trust"); United States v. Bengali, 11 F.3d 1207, 1211-13 (4th Cir. 1993) (affirming admission of prior extortion incident under Rule 404(b) to show intent); United States v. Aliaga, 617 F. App'x 971, 974 (11th Cir. 2015) (earlier extortion attempts relevant to show defendant's "intent to obtain money from others"). A case cited by defendant (Mot. at 9) further supports this argument. United States v. Wells, 879 F.3d 900, 928 (9th Cir. 2018) (defendant's "background information" regarding "his relationships with coworkers, his working environment and his work history [all] relevant in a workplace homicide prosecution").

That these text messages and conduct occurred subsequent to the charged conspiracy does not impact their admissibility, as "acts both prior and subsequent to the indictment period may be probative of the defendant's state of mind." United States v. Voorhies, 658 F.2d 710, 715 (9th Cir. 1981); United States v. Ayers, 924 F.2d 1468, 1473 (9th Cir. 1991) (defendant's subsequent fraudulent conduct two years after indictment period admissible under Rule 404(b) to show, among other things, intent and identity); United States v. McDonald, 576 F.2d 1350, 1356 (9th Cir. 1978) (when defendant claimed no knowledge of fraudulent activities, testimony that he subsequently participated in other land fraud schemes was admitted to show knowledge and intent).<sup>11</sup>

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<sup>11</sup> Defendant Banks' modus operandi of funding his associates' criminality is further confirmed by a seized audio message from [REDACTED]

[REDACTED] He explained that "people call [Banks] for money," he gives out "500, 600 thousand [] to the streets," including funding his conspirators' "sliders," --- slang for stolen cars used to commit crimes. The admission of such audio further proves identity and absence of mistake, i.e., that Banks was the individual who promised a reward for the killing of T.B. See, e.g., United States v. Tai, 994 F.2d 1204, 1209-10 (7th Cir. 1993)

(footnote cont'd on next page)

**D. The Government Must Be Permitted to Introduce Certain of Defendant Banks' Lyrics That Are Highly Probative Of Disputed Issues In This Case**

At trial, the government intends to introduce a limited set of defendant Banks' lyrics that directly bear on material issues the jury will decide in this case.<sup>12</sup>

Certain of the lyrics defendant Banks seeks to omit are party admissions that are inextricably intertwined with the charges in this case. See, e.g., United States v. Pierce, 785 F.3d 832, 840 (2d Cir. 2015) (rap video admissible to show defendant's "association with members of the enterprise and his motive to participate in the charged conduct against" rival gang members).

For example, as discussed above, the government will introduce evidence that OTF members (including defendant Banks) were pressured by fans to seek revenge for Bennett's killing (e.g., to "Slide for Von"). Based on defendant Bank's motion, he plans to contest this issue and even may dispute the meaning of what the government believes is a straightforward call for revenge, see Mot. at 15 ("It is unclear what 'Slide for Von' means..."). The government must be permitted to present defendant Banks' *own statements* which dispel any ambiguity as to the meaning of "sliding for Von": "Smurk, slide slide slide. Don't respond to shit with Von . . . I'm like, 'fuck it, you trippin', go get your gun' . . . They droppin' locations, I'm

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(explaining, in prosecution for extortion, that evidence of defendant's prior association and employment of individual who carried out extortionate act was admissible under Rule 404(b) to show defendant's identity as person responsible for act).

<sup>12</sup> The government reserves the right to introduce other co-conspirators lyrics as inextricably intertwined and/or 404(b) evidence, including defendant Wilson aka "Deeski." The government will comply with the Court's 404(b) deadline to notice any additional evidence that require notice under the rule.



1 getting' it done (woo-woo-woo, gang), Fuck tweetin', we slidin', the  
2 feds are comin'." <sup>13</sup> Additionally, in another recorded song seized  
3 from [REDACTED]'s cell phone pursuant to a search warrant,  
4 defendant Banks describes a scene with striking similarity to the  
5 stalking and murder of S.R. in Los Angeles, namely, referencing a  
6 "bounty hunter" and being in Beverly Hills with machineguns  
7 ("choppers") looking for rivals. <sup>14</sup>

8 Other of defendant Banks' lyrics are similarly material to  
9 disputed issues in this case. A primary disputed issue, for example,  
10 will be whether defendant Banks offered a monetary reward (the  
11 bounty) for the hitmen to fly across the country to kill T.B. That  
12 defendant Banks has explicitly referenced offering payment to  
13 "catch" <sup>15</sup> a rival is proof not only of defendant Banks' plan, modus  
14 operandi, identity, and absence of mistake with respect to the  
15 charges at issue, but also his co-conspirators eagerness to act on  
16 the quid pro quo and accept their reward. See, e.g., United States  
17 v. Moore, 639 F.3d 443, 447-48 (8th Cir. 2011) (admitting violent rap  
18 lyrics over a Rule 403 objection because the lyrics were probative of  
19 the defendant's participation in the charged conspiracy).  
20  
21

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22 <sup>13</sup> "Ahhh Ha", Lil Durk, available at  
23 [https://www.youtube.com/watch?v=\\_q6go0G49A0](https://www.youtube.com/watch?v=_q6go0G49A0).

24 <sup>14</sup> "Scoom his Ass (ft. Boonie Moe) (Official Video)", available  
25 at <https://www.youtube.com/watch?v=HXUDCW4wECY>. Although "Scoom his  
26 Ass" does not appear to have been officially released by defendant,  
the lyrics are authentic as the government seized the audio file from  
a co-conspirator's cellular phone pursuant to a federal search  
warrant, which has been produced to the defense. See Bates Media  
638.

27 <sup>15</sup> "I don't want no niggas who you catch, **I want the one I paid**  
28 **for** ... Trollin' ass, we shot your homie." "Gucci Mane - Rumors feat.  
Lil Durk [Official Video]", available at  
<https://www.youtube.com/watch?v=QVn1DGgqBNo> (emphasis added).

1        These admissions straight from defendant Banks --- regardless of  
2 when they were written or who penned them --- show intricate  
3 knowledge of the Los Angeles murder that only those involved would  
4 likely know and/or are admissions relevant to prove identity and  
5 absence of mistake in directing and promising a reward for violence  
6 against T.B.<sup>16</sup> See, e.g., United States v. Stuckey, 253 F. App'x  
7 468, 482-83 (6th Cir. 2007) ("Government introduced the rap lyrics  
8 not to show that Stuckey was of a bad character or had a propensity  
9 for violence (or another bad character trait), but to show that he  
10 killed Darbins. Statements that Stuckey dislikes and kills  
11 "snitches," fills their bodies with holes, wraps them in blankets,  
12 and dumps them in the road provides direct evidence that Stuckey shot  
13 Darbins, wrapped his body in blankets, and dumped it in the road.").

14        **E. Evidence Showing a 2022 Murder In Chicago Was Motivated By**  
15        **Money Linked to OTF and Defendant Banks**

16        The government intends to present limited, discrete evidence of  
17 a murder-for-hire charged in the Northern District of Illinois  
18 showing the hitmen's expectation to be paid by defendant Banks. See  
19 United States v. Montgomery-Wilson, et al., Case No. CR 23-546 (N.D.

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21        <sup>16</sup> A common theme throughout the motion is defendant asserts the  
22 purported difficulty to lay foundation for various pieces of  
23 evidence, including defendant's lyrics that were either formally  
24 released to the public or the audio files were seized pursuant to  
25 federal search warrants. In either case, foundational testimony  
26 showing defendant --- not someone else --- made the statement will be  
27 easily satisfied. See e.g., United States v. Ehmer, 87 F.4th 1073,  
28 1122 (9th Cir. 2023) (agent's testimony that he recognized speaker's  
voice and downloaded broadcasted recording between interviewer and  
defendant from interviewer's website was sufficient to authenticate  
recording even though recording had been edited for publication).  
Defendant's contention that the use of his lyrics runs afoul of the  
First Amendment is similarly meritless. See Wisconsin v. Mitchell,  
508 U.S. 476, 489 (1993) ("The First Amendment ... does not prohibit  
the evidentiary use of speech to establish the elements of a crime or  
to prove motive or intent.")

1 Ill.). These acts are directly relevant and highly probative of  
2 defendant Banks' identity as the contractor for the hit on T.B., as  
3 well as plan, modus operandi, and absence of mistake --- i.e., that  
4 he, and not another OTF member, ordered and financed the Los Angeles  
5 murder. Specifically, the government has carefully selected narrow  
6 pieces of evidence showing that two alleged shooters in the Chicago  
7 case discussed payment from OTF and defendant Banks just two weeks  
8 after the murder of a well-known Chicago gang member, S.M. The  
9 government intends to admit a handful of short text messages showing  
10 that one shooter texted the other: "Wassup with otf . . . Wym [what  
11 do you mean] they not paying . . . Did durk gave u that money," and  
12 DNA and fingerprint evidence linking the shooters to the crime scene.  
13 The government also intends to introduce a social media post that one  
14 of the alleged shooters' posted shortly after this text thread,  
15 showing him holding money while a song by defendant Banks played in  
16 the background.

17 These discrete acts are highly probative to prove defendant  
18 Banks' identity, plan, modus operandi, and absence of mistake to show  
19 that he (and not another OTF member) ordered, directed, and financed  
20 the Los Angeles murder, with a promise of a reward to his hitmen.  
21 See, e.g., Jourdain, 433 F.3d at 659 (evidence of defendant's prior  
22 solicitation of shooting relevant to show association with co-  
23 conspirators and absence of mistake, among other things).<sup>17</sup> Such  
24

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25 <sup>17</sup> Although laying the foundation to prove these discrete facts  
26 would potentially require three or four witnesses, the government  
27 anticipates such testimony would not take up an unnecessarily lengthy  
28 amount of time, especially when weighed against the probative value  
of this 404(b) evidence. Moreover, should either of the defendants  
charged in the Chicago case plead guilty prior to the trial in this  
case, the government would likely propose admitting certified

(footnote cont'd on next page)

evidence is particularly crucial in this case, as the government expects the evidence at trial will show that the defendants took significant steps to conceal their involvement in Los Angeles murder, including by using encrypted communications and/or burner phones, and that defendant Banks used [REDACTED] [REDACTED]. As he has repeatedly done in his pleadings, defendant Banks will undoubtedly argue that the failure to seize direct communications about the murder purportedly shows defendant Banks did not participate in or commit the murder. (See, e.g., Mot. at 2, 27 (calling the case against defendant Banks "thin," "fatally weak," and "born out of the government's own missteps"). These arguments further illuminate how the 2022 Chicago murder --- and all of the evidence outlined above --- bears on critical, disputed issues in this case. While defendant is free to argue his view that the government's case against him is weak, the jury must also see and hear evidence to rebut defendant's argument that the hitmen in this case (OTF members and associates) committed the crime on their own accord.

**F. The Requirements of Rule 404(b) Are Met for Evidence Described Above**

As detailed above, much of the evidence defendant seeks to exclude is direct and/or inextricably intertwined evidence, and therefore not subject to exclusion under Rule 404(b). To the extent Rule 404(b) applies, the evidence should be admitted for the following additional reasons:

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conviction records to establish the shooters' identity, which would significantly streamline presentation of this evidence.

1           1.     The Acts Are Not Too Remote in Time

2           The other acts described above are not too remote in time, as  
3 they all took place within approximately a year and a half of S.R.'s  
4 murder. See, e.g., United States v. Ayers, 924 F.2d 1468, 1474 (9th  
5 Cir.1991) (subsequent acts ranging from nine months to two years  
6 after the charged offense were not too remote); United States v. Ono,  
7 918 F.2d 1462, 1465 n.2 (9th Cir. 1990) (admitting seven-year-old  
8 prior conviction under 404(b)); United States v. Hadley, 918 F.2d  
9 848, 851 (9th Cir. 1990) (same, regarding ten-year old act); United  
10 States v. Ross, 886 F.2d 264, 267 (9th Cir. 1989) (same, regarding  
11 13-year old prior act).

12           2.     The Acts Are Based on Sufficient Evidence

13           There is ample evidence to prove up each of the discrete acts,  
14 including digital communications and cooperator testimony. See  
15 Huddleston v. United States, 485 U.S. 681, 687 (1988) (rejecting  
16 preponderance threshold for admitting 404(b) evidence as  
17 "inconsistent with the structure of the Rule of Evidence and the  
18 plain language of Rule 404(b)"); id. at 691 (explaining that proof of  
19 other acts need only be such that "the jury reasonably could have  
20 concluded" that prior acts occurred); see also United States v.  
21 Johnson, 132 F.3d 1279, 1283 (9th Cir. 1997) ("This reliability  
22 threshold is not a high one, and the testimony of a single witness  
23 can be sufficient."); United States v. Hinton, 31 F.3d 817, 823 (9th  
24 Cir. 1994) ("We are not persuaded that where a witness testifies as  
25 to the defendant's prior bad acts, the jury must be presented with  
26 evidence corroborating the witness' testimony to satisfy the low  
27 threshold required by this part of the test.").

1 Here, the evidence sought to be admitted more than meets this  
2 low threshold. The proof consists of: (i) defendant Banks' and his  
3 co-conspirators' own text messages discussing violence, corroborated  
4 by anticipated testimony of cooperating witnesses; (ii) defendant's  
5 own recorded admissions in his raps about bounties, the meaning of  
6 "Slide for Von," and details about stalking rivals in Beverly Hills;  
7 and (iii) discrete evidence from S.M.'s murder case showing the  
8 murder was motivated by anticipated payments by defendant Banks  
9 and/or OTF, including DNA results and text messages. All of these  
10 categories of evidence, each of which corroborates the other, is more  
11 than enough to establish the other acts under Rule 404(b).

12 3. The Other Acts Are Sufficiently Similar to the Charged  
13 Offense

14 As a threshold matter, "when offered to prove knowledge, ... the  
15 prior act need not be similar to the charged act as long as the prior  
16 act was one which would tend to make the existence of the defendant's  
17 knowledge more probable than it would be without the evidence."  
18 United States v. Vo, 413 F.3d 1010, 1018 (9th Cir. 2005) (cleaned  
19 up). Nonetheless, all of the acts set forth above are sufficiently  
20 similar to the charged conduct. See Johnson, 132 F.3d at 1283  
21 (holding that "past conduct need not be identical . . . but instead  
22 need only be similar enough to be probative of intent").

23 Here, the SSI alleges that the co-conspirators --- funded and  
24 directed by defendant Banks --- flew across the country to stalk and  
25 kill one of defendant Banks' rivals in exchange for a reward. Each  
26 of the above-described pieces of evidence is strikingly similar  
27 conduct to that alleged here. First, defendant Banks' text message  
28 threats and his admissions to committing violent acts in his rap

1 songs all demonstrate the power and control he has over his OTF co-  
2 conspirators in ordering violence, and that defendant Banks --- not  
3 another OTF member --- directed the activities of other OTF members.  
4 Indeed, the text messages and lyrics both fully embrace the influence  
5 defendant Banks wields over his confederates, such as his admissions  
6 that: "**I got** them hunting you up"; "**I don't want** no niggas who you  
7 catch, **I want the one I paid for**"; and "They droppin' locations, **I'm**  
8 **getting' it done** (woo-woo-woo, gang), Fuck tweetin', we slidin."  
9 Second, the response of OTF members and associates to defendant  
10 Banks' calls for action against his rivals is the same: they act at  
11 his direction, with his funds. All of this evidence satisfies Rule  
12 404(b)'s similarity requirement.

13 4. The Rule 403 Balancing Test Favors Admission

14 Rule 403 does not bar the admission of evidence of the above-  
15 described evidence. "Relevant evidence is inherently prejudicial,"  
16 and it is "only unfair prejudice, substantially outweighing probative  
17 value," that justifies "exclusion of relevant matter under Rule 403."  
18 United States v. Hankey, 203 F.3d 1160, 1172 (9th Cir. 2000).

19 Here, the other acts are highly probative for the reasons  
20 discussed above. Specifically, they provide critical context for the  
21 charged offenses and point to defendant Banks' and his co-  
22 conspirators' intent, identity, relationship, motive, and the manner  
23 in which the co-conspirators carried out the attempted assassination  
24 of T.B. The fact that the evidence tends to prove the charges  
25 against defendants does not render it unfairly prejudicial. See  
26 United States v. Parker, 549 F.2d 1217, 1222 (9th Cir. 1977) (Rule  
27 404(b) evidence "'is not rendered inadmissible because it is of a  
28 highly prejudicial nature .... The best evidence often is.'"); see

1 also United States v. Blitz, 151 F.3d 1002, 1009 (9th Cir. 1998)  
2 (“[E]ven if ... [404(b)] evidence resulted in some prejudice (and all  
3 unfavorable evidence about a defendant does), it was not ‘unfair  
4 prejudice’ and did not ‘substantially outweigh’ the high probative  
5 value of the evidence.”). Moreover, any risk of unfair prejudice can  
6 be lessened by providing the jury with a limiting instruction as to  
7 the significance of the prior acts evidence. See, e.g., United  
8 States v. O’Brien, 601 F.2d 1067, 1070 (9th Cir. 1979) (“Limiting  
9 instructions may reduce or eliminate prejudice which would otherwise  
10 occur.”); United States v. Manning, 56 F.3d 1188, 1197 (9th Cir.  
11 1995) (evidence of prior bombing conviction admissible in trial for  
12 murder by mail bomb; limiting instruction indicated that court  
13 conducted balancing).

14 **G. The Government’s 404(b) Notice is Sufficient**

15 Finally, defendants contend that the Court should exclude the  
16 government’s proposed evidence in its preliminary disclosure because  
17 the notice was purportedly insufficient. (Mot. at 4-5.) The Court  
18 should reject this assertion out of hand for multiple reasons.  
19 First, the direct and inextricably intertwined evidence described in  
20 Section III.A-B is not subject to any notice requirement, and  
21 therefore cannot be excluded on that basis. Second, the government’s  
22 notice --- although preliminary --- was nonetheless robust and  
23 satisfies Rule 404(b)’s requirement to provide “the general nature of  
24 the evidence” before trial. United States v. Peyton, 28 F. App’x  
25 655, 658 (9th Cir. 2002) (“Peyton was apprised of the general nature  
26 of the evidence, in the form of names but not documentary records,  
27 well before trial. Fed. R. Evid. 404(b) advisory committee’s note,  
28 1991 Amendment (“[O]pt[ing] for a generalized notice provision which



1 requires the prosecution to apprise the defense of the general nature  
2 of the evidence of extrinsic acts.")). Indeed, the notice, which is  
3 not due until November 17, 2025, provides specific pieces of evidence  
4 that have been produced in discovery that the government intends to  
5 admit at trial, and the bases for their admissibility. That is all  
6 the rule requires.

7 **IV. SEVERANCE IS LEGALLY AND FACTUALLY UNWARRANTED**

8 Defendant Wilson, joined by defendants Lindsey and Houston, has  
9 also filed a conditional motion to sever, contending that "if the  
10 Court were to allow the Government to introduce this evidence [in the  
11 government's preliminary disclosure], severance is the only way to  
12 protect Mr. Wilson's right to a fair trial." (Mot. at 5.)  
13 Defendants' argument that the "spillover" prejudice from the  
14 government's evidence requires severance misconstrues the relevance  
15 of the proposed evidence and is, in any event, legally unsupported.  
16 This motion, too, should be rejected.

17 **A. Legal Standard for Severance**

18 Courts have uniformly expressed an overwhelming preference for  
19 the joint trial of co-defendants charged in the same indictment.  
20 "Defendants jointly indicted ordinarily should be jointly tried."  
21 United States v. Polizzi, 801 F.2d 1543, 1553 (9th Cir. 1986).  
22 Although the district court may order separate trials if a joint  
23 trial would be prejudicial, see Fed. R. Crim. P. 14(a), the burden of  
24 showing prejudice is high. "Severance is appropriate under Rule 14  
25 'only if there is a serious risk that a joint trial would compromise  
26 a specific trial right of one of the defendants, or prevent the jury  
27 from making a reliable judgment about guilt or innocence.'" United  
28 States v. Stinson, 647 F.3d 1196, 1205 (9th Cir. 2011) (quoting

1 Zafiro v. United States, 506 U.S. 534, 539 (1993)). Since the  
2 possibility of some prejudice is present whenever defendants are  
3 joined for trial, the defendant bears a "heavy burden" to show  
4 "clear," "manifest," or "undue" prejudice from a joint trial. United  
5 States v. Tootick, 952 F.2d 1078, 1080 (9th Cir. 1991); United States  
6 v. Polizzi, 801 F.2d 1543, 1554 (9th Cir. 1986).

7 Severance is especially disfavored in conspiracy trials such as  
8 this one. "[A] joint trial is particularly appropriate where the co-  
9 defendants are charged with conspiracy, because the concern for  
10 judicial efficiency is less likely to be outweighed by possible  
11 prejudice to the defendants when much of the same evidence would be  
12 admissible against each of them in separate trials." United States  
13 v. Fernandez, 388 F.3d 1199, 1241 (9th Cir. 2004).

14 The district court has wide latitude to deny severance. "The  
15 test for determining abuse of discretion in denying severance [] is  
16 whether a joint trial would be so prejudicial that the trial judge  
17 could exercise [her] discretion in only one way." United States v.  
18 Escalante, 637 F.2d 1197, 1201 (9th Cir. 1980). The mere fact that a  
19 defendant believes he has a better chance of acquittal if tried  
20 separately does not require severance. Zafiro v. United States, 506  
21 U.S. 534, 540 (1993). Defendant must "also show a violation of one  
22 of his substantive rights by reason of the joint trial," such as  
23 "unavailability of full-cross examination, lack of opportunity to  
24 present individual defenses," "denial of Sixth Amendment  
25 confrontation rights," or "failure to properly instruct the jury on  
26 the admissibility of the evidence as to each defendant." United  
27 States v. Escalante, 637 F.2d 1197, 1201 (9th Cir. 1980).

1           **B. Severance is Inappropriate Because the Government's**  
2           **Proposed Evidence is Relevant to all Defendants' Identity,**  
3           **Motive, Intent, Plan, Preparation, and Knowledge**

4           As detailed above, the government does not anticipate that the  
5 defendants will credibly challenge that two vehicles were used to  
6 track, stalk, and ultimately murder S.R. during the January 2026  
7 trial. Instead, the jury's focus will be deciding *who* ordered and  
8 participated in the Los Angeles murder, and *why*?

9           Defendant Wilson's severance motion is based on the mistaken  
10 view that the critical evidence described above is relevant and  
11 therefore admissible against only defendant Banks. Not so. Evidence  
12 showing that a high-profile member of OTF (Bennett) was shot and  
13 killed by someone affiliated with T.B. is material to proving motive  
14 for all OTF defendants, including defendants Banks, Wilson and  
15 Houston. The motive evidence also shows why OTF members recruited  
16 others to commit the Los Angeles murder, including defendant Lindsey.  
17 Indeed, without this evidence, the jury could be misled into  
18 believing this was a random shooting at a gas station, when the  
19 murder was instead a premeditated attempt to kill OTF rival, T.B.

20           A majority of the remaining disputed evidence is similarly  
21 admissible against all defendants. For example, the evidence showing  
22 defendant Banks' control and leadership over OTF (including his  
23 knowledge of and involvement in OTF's violence) shows the  
24 relationship between the co-conspirators and explains why they were  
25 willing to travel across the country to commit a murder. The same  
26 reasoning applies to defendant Lindsey, who is alleged to have been  
27 recruited by defendant Wilson to participate in the murder in  
28 exchange for money.

1 Even if some of the evidence would be admissible only against a  
2 particular defendant, defendants have not demonstrated the  
3 insufficiency of limiting instructions. Historically, "[t]he Supreme  
4 Court has held that the risk of prejudice posed by joint trials can  
5 be cured by proper jury instructions." United States v. Nelson, 137  
6 F.3d 1094, 1108 (9th Cir. 1998); see Zafiro, 506 U.S. at 540-41. For  
7 a defendant to be entitled to severance based on the "spillover"  
8 effect of evidence against a co-defendant, he must "demonstrate the  
9 insufficiency of limiting instructions given by the judge." United  
10 States v. Joetzki, 952 F.2d 1090, 1094 (9th Cir. 1991). So long as  
11 the district judge provides the jury with instructions that make  
12 clear which defendant is charged with each offense, the defendants  
13 are not entitled to severance. See Nelson, 137 F.3d at 1108.

14 To the extent the Court determines that evidence is admissible  
15 for a limited purpose against certain trial defendants,<sup>18</sup> the  
16 government anticipates that the Court will provide the jury with the  
17 standard instructions given for trial in this district, including  
18 Ninth Circuit Model Jury Instructions 3.9 (advising jury it should  
19 evaluate with "greater caution" testimony from a witness who pleads  
20 guilty to a crime arising out of the same events as for which the  
21 defendant is on trial), Instruction 1.13 (instructing jury to give  
22 separate consideration of evidence against each separate defendant),  
23 and Instruction 6.13 (advising jury to give separate consideration of  
24 multiple counts against multiple defendants). There is no indication  
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28 <sup>18</sup> The severance motion is also premature, as it is unclear if  
all defendants will even proceed to trial and the Court has not yet  
ruled on defendant Banks' motion to exclude.

1 that these instructions, including any additional curative  
2 instructions the Court may see fit to give, would be insufficient.

3 **V. CONCLUSION**

4 For the foregoing reasons, the government respectfully requests  
5 that this Court deny the motion to exclude and the motion to sever.  
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